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#9

JUL 31 1991

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In re Application of	:	
Joe W. Gray et al	:	
Serial No. 07/537,305	:	DECISION DISMISSING
Filed: June 12, 1990	:	PETITION
For: CHROMOSOME-SPECIFIC STAINING	:	
TO DETECT GENETIC	:	
REARRANGEMENTS	:	

This is in response to the letter filed April 15, 1991, which has recently been referred to the Office of the Assistant Commissioner for Patents and which is being treated as a petition requesting that the filing date of the above-identified application be changed from June 12, 1990, to June 11, 1990. The petition is dismissed because it lacks the required petition fee (see 37 CFR 1.17(h)).

Petitioners have requested the earlier filing date on the basis that the application was purportedly mailed to the Patent and Trademark Office (PTO) via Express mail on June 11, 1990.

A review of this application file reveals that the application papers were filed with a certificate of mailing by Express Mail dated June 11, 1990.

The Express Mail Post Office to Addressee label No. RB160339960 for the Express Mail package in question bears a "Date-in" of June 12, 1990, literally "6-12". The Mail Room date stamp on label No. RB160339960 indicates that the Express Mail package in question was received by the PTO on June 13, 1990.

Paragraph (c) of 37 CFR 1.10 states that:

"the...Office will accept the certificate of mailing by 'Express Mail' and accord the paper or fee the certificate date under 35 U.S.C. 21(a)...without further proof of the date on which the mailing by 'Express Mail' occurred unless a question is present regarding the date of mailing."

Clearly, when the certificate of mailing by Express Mail contains one date and the Express Mail label contains another date there is a question "regarding the date of mailing." The certificate of mailing by Express Mail is not sufficient evidence by itself to establish the date of mailing. The PTO considers the date "the paper or fee is shown to have been deposited as Express Mail to be the "Date In" on the Express Mail label. That is the date that verifies that the package was actually mailed. 37 CFR 1.10(a) indicates that papers or fees filed under the practice set forth in 37 CFR 1.10 will "be considered as having been filed in the Office on the date the paper or fee is shown to have been deposited as 'Express Mail' with the United States Postal Service." Therefore, in those cases where there is a discrepancy, the question is resolved by using the "Date In" on the Express Mail receipt, which verifies when it was mailed via "Express Mail." Placing the "Date-In" on the Express Mail receipt by the postal clerk establishes that the package was actually received by the Postal Service.

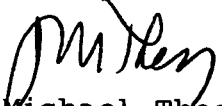
Therefore, the application was properly accorded a filing date of June 12, 1990, the date of receipt inserted on the Express Mail label by the Postal Service employee.

Additionally, 37 CFR 1.10(c) also requires that "If..questions regarding the date of mailing are present, the person mailing the paper or fee may be required to file a statement averring to the fact that the mailing occurred on the date certified." However, petitioners have not provided the requisite verified statement.

If applicants wish to have the filing date changed and are of the opinion that the Postal Service may have made an error in the handling of the Express Mail package in question, it will be necessary to file the \$120.00 petition fee and any additional information that would substantiate the allegation that the U.S. Postal Service committed an error in recording the date of deposit on the Express Mail receipt, including at least an explanatory letter from the Postal Service and a verified statement from the person who mailed the paper averring to the fact that the mailing occurred on the date certified (37 CFR 1.10).

The petition is dismissed.

The application is being returned to Examining Group 180 with a filing date of June 12, 1990, for examination in due course.


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